

POST AUGUST 13-28, 2018 15-DAY RENOTICE  
ADDENDUM TO THE INITIAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

The Department has found these regulations neither inconsistent or incompatible with existing regulations because research was done by program to determine that these are non-duplicating and non-repetitive regulations, and do not negate or overlap other existing regulation or law. Further, these regulations are not duplicative of any federal law.

Section 130001(a)

Specific Purpose:

This section is adopted to clarify that unless otherwise specified by the Department, a Home Care Organization must maintain all personnel and administrative records in a hard copy format.

Factual Basis:

This section is adopted and is necessary for the Department to access and review information related to licensee, staff, volunteer, and Home Care Aide compliance as authorized by Section 1796.63(a) of the Health and Safety Code.

Modification:

**Following the 15-day comment period in response to comment A.2. of Section c), the Department is making a change to this section to allow Home Care Organizations to maintain personnel and administrative records in an electronic format.**

Section 130001(a)(1)

Specific Purpose:

**This section is adopted to specify that a Home Care Organization licensee must produce any personnel or administrative records in a hard copy format if requested by the Department.**

**Factual Basis:**

This section is adopted and is necessary for the Department to access and review information related to licensee, staff, volunteer, and Home Care Aide compliance as authorized by Section 1796.63(a) of the Health and Safety Code.

**Section 130001(a)(2)**

**Specific Purpose:**

This section is adopted to specify that all documents with an original signature must be maintained in hard copy format.

**Factual Basis:**

This section is adopted and is necessary for the Department to access and review information related to licensee, staff, volunteer, and Home Care Aide compliance as authorized by Section 1796.63(a) of the Health and Safety Code.

**Section 130003(i)(2)**

**Specific Purpose:**

This section is adopted for clarity to include a definition of the term "Inspection."

**Factual Basis:**

This section is adopted and is necessary to provide a definition of "inspection" to mean a site visit by a Department representative to the Home Care Organization to ensure compliance with applicable laws, as authorized by Section 1796.63(a) of the Health and Safety Code.

**Modification:**

**The Department is adding "or suboffice" for the term inspection for compliance concerns.**

**Section 130027(a)**

**Specific Purpose:**

This section is adopted to specify that unless prior written approval is received from the Department, the Home Care Organization is required to maintain continuous compliance with regulations.

Factual Basis:

This section is adopted and is necessary to specify the waivers and exceptions compliance requirements as authorized by Sections 1796.51 and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a grammatical correction by adding "subdivision."**

Section 130027(d)

Specific Purpose:

This section is adopted to specify that within ninety (90) calendar days following acceptance of a waiver or exception request, the Department will notify the Home Care Organization or licensee in writing whether the request has been approved or denied.

Factual Basis:

This section is adopted and is necessary to specify the waivers and exceptions requirements as authorized by Sections 1796.51 and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a grammatical correction by adding "subdivision."**

Section 130028(a)(1)

Specific Purpose:

This section is adopted to specify that the Department will charge Home Care Organizations a nonrefundable initial application fee in the amount of five thousand six hundred three dollars (\$5,603).

Factual Basis:

This section is adopted and is necessary to specify the licensing fees as authorized by Sections 1796.12, 1796.31, 1796.47, 1796.49, and 1796.63 of the Health and Safety Code.

**Modification:**

The Department is making a change to this section provide that the initial application fee will remain the amount of five thousand six hundred three dollars (\$5,603) until updated and making a grammatical correction by adding "subdivision."

**Section 130028(a)(2)**

**Specific Purpose:**

This section is adopted to specify that the Department will update and publish the fee for an initial application, as often as necessary but no more than once every twelve months from the latest update, in the amount determined by the Department and consistent with Health and Safety Code sections 1796.47 through 1796.49. The updated fee will be published in a Department Provider Information Notice, as well as on the Department's website.

**Factual Basis:**

This section is adopted and is necessary to specify the licensing fees may be adjusted by the Department as authorized by Sections 1796.12, 1796.31, 1796.47, 1796.49, and 1796.63 of the Health and Safety Code.

**Section 130028(a)(3) is Renumbered from Section 130028(a)(2)**

**Specific Purpose:**

This section is adopted to specify that the Department will charge Home Care Organizations a nonrefundable renewal fee in the amount of five thousand six hundred three dollars (\$5,603).

**Factual Basis:**

This section is adopted and is necessary to specify the licensing fees as authorized by Sections 1796.12, 1796.31, 1796.47, 1796.49, and 1796.63 of the Health and Safety Code.

**Modification:**

This section is renumbered from Section 130028(a)(2) to Section 130028(a)(3) to accommodate adopting the new Section 130028(a)(2). The Department is making a change to this section provide that the renewal application fee will remain the amount of five thousand six hundred three dollars (\$5,603) until updated and making a grammatical correction by adding "subdivision."

#### **Section 130028(a)(4)**

##### **Specific Purpose:**

**This section is adopted to specify that the Department will update and publish the fee for a renewal application, as often as necessary but no more than once every twelve months from the latest update, in the amount determined by the Department and consistent with Health and Safety Code sections 1796.47 through 1796.49. The updated fee will be published in a Department Provider Information Notice, as well as on the Department's website.**

##### **Factual Basis:**

**This section is adopted and is necessary to specify the licensing fees may be adjusted by the Department as authorized by Sections 1796.12, 1796.31, 1796.47, 1796.49, and 1796.63 of the Health and Safety Code.**

#### **Sections 130048(d)(1)**

##### **Specific Purpose:**

This section is adopted to specify that the Department has the authority to inspect, audit, and copy Home Care Organization records upon demand during business hours and may remove the records for copying if necessary. The Department representative may not remove any current emergency and health-related information for current personnel if the same information not readily available in another document or format.

##### **Factual Basis:**

This section is adopted and is necessary to specify the Department's inspection and investigation authority as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

##### **Modification:**

**The Department is making a change to this section to provide for electronic records and make clear the requirement that the Department representative may not remove any current emergency and health-related information for current personnel if the same information not readily available in another document or format by adding "not" prior to "otherwise available."**

#### Section 130050(a)

##### Specific Purpose:

This section is adopted to specify that the Department will make unannounced inspections of Home Care Organizations no less than once every two (2) years following the effective date of the license. The Home Care Organization is responsible for correcting any deficiencies found during the inspection, and compliance with all applicable laws will be determined by the Department.

##### Factual Basis:

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

##### Modification:

**The initial language for Section 130050(a) is deleted in its entirety and replaced as follows:**

#### **Section 130050(a)**

##### **Specific Purpose:**

**This section is adopted to specify that each Home Care Organization and suboffice shall be periodically subjected to unannounced inspections by the Department to ensure compliance with applicable statutes and regulations.**

##### **Factual Basis:**

**This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.**

#### **Section 130050(a)(1)**

##### **Specific Purpose:**

**This section is adopted to specify that the initial unannounced inspection shall occur within two years following initial licensure.**

##### **Factual Basis:**

**This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.**

**Section 130050(a)(2)**

**Specific Purpose:**

This section is adopted to specify that a Home Care Organization shall be responsible for correcting any deficiencies found during an inspection and compliance with all applicable statutes and regulations shall be determined by the Department.

**Factual Basis:**

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

**Sections 130050(b) through 130050(b)(2)**

**Specific Purpose:**

These sections are adopted to specify that the Department may require a licensee to utilize a self-attestation process during each licensing renewal cycle to certify that the Home Care Organization, staff, and associated Home Care Aides are in compliance with all applicable statutes and regulations. The licensee shall disclose if the Home Care Organization, staff, and associated Home Care Aides are not in compliance. It also specifies that the self-attestation shall be signed under penalty of perjury, that the Department will provide the licensee with the self-attestation by mail, and provide notice as to the date the self-attestation shall be returned to the Department.

**Factual Basis:**

These sections are adopted and are necessary to specify the enforcement process as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

**Section 130050(c) is Renumbered from Section 130050(b)**

**Specific Purpose:**

This section is adopted to specify that if a Department representative determines that a deficiency exists, a notice of deficiency will be issued, unless the deficiency is minor and immediately corrected.

Factual Basis:

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

Modification:

**This section is renumbered from Section 130050(b) to Section 130050(c) to accommodate the new requirement for self-attestation, including removing "during the visit" from the section. As well as provide clarification that the deficiency must be immediately corrected.**

**Section 130050(d) is Renumbered from Section 130050(c)**

Specific Purpose:

This section is adopted to specify that prior to completion of an inspection, investigation, or other licensing visit, the Home Care Organization licensee or designee must meet with the Department representative to discuss any deficiencies, develop a plan for correcting each deficiency, and acknowledge receipt of the notice of deficiency.

Factual Basis:

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

Modification:

**This section is renumbered from Section 130050(c) to Section 130050(d) to accommodate the new requirement for self-attestation. No other changes are being made to this section.**

**Section 130050(e) is Renumbered from Section 130050(d)**

Specific Purpose:

This section is adopted to specify what information needs to be in the written notice of deficiency.



Factual Basis:

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

Modification:

**This section is renumbered from Section 130050(d) to Section 130050(e) to accommodate the new requirement for self-attestation. No other changes are being made to this section.**

**Section 130050(f) is Renumbered from Section 130050(e)**

Specific Purpose:

This section is adopted to specify how the Department representative will provide notice of deficiency to the licensee.

Factual Basis:

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

Modification:

**This section is renumbered from Section 130050(e) to Section 130050(f) to accommodate the new requirement for self-attestation. No other changes are being made to this section.**

**Section 130050(f)(4)**

Specific Purpose:

**This section is adopted to specify that a copy of the notice shall be provided to the licensee by certified mail.**

Factual Basis:

**This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.**

### **Section 130050(g) is Renumbered from Section 130050(f)**

#### **Specific Purpose:**

This section is adopted to specify that the licensee is be responsible for ensuring the plan of correction is implemented and monitored so compliance is maintained.

#### **Factual Basis:**

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

#### **Modification:**

**This section is renumbered from Section 130050(f) to Section 130050(g) to accommodate the new requirement for self-attestation. No other changes are being made to this section.**

### **Section 130050(h) is Renumbered from Section 130050(g)**

#### **Specific Purpose:**

This section is adopted to specify that if no deficiency is cited, the licensee will receive a Home Care Organization summary report, which will serve as record of the visit.

#### **Factual Basis:**

This section is adopted and is necessary to specify the process for deficiencies in compliance as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

#### **Modification:**

**This section is renumbered from Section 130050(g) to Section 130050(h) to accommodate the new requirement for self-attestation. No other changes are being made to this section.**

### **Section 130066(c)**

#### **Specific Purpose:**

This section is adopted to specify what additional documentation needs to be included in each Affiliated Home Care Aide's personnel record in either hard copy or electronic copy, including: documentation of a criminal record clearance, criminal record exemption, or transfer; all hard copy mail documents and

communications received from the Department by the licensee; verification of training hours; a signed statement acknowledging the requirement to report suspected child, dependent adult, and elder abuse; all communication pertaining to the Affiliated Home Care Aide's registration; tuberculosis examination documentation; and a signed Criminal Record Statement (LIC 508) form furnished by the Department.

Factual Basis:

This section is adopted and is necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section to allow Home Care Organizations to maintain personnel records in a hard copy or an electronic format.**

Section 130066(c)(2)

Specific Purpose:

This section is adopted to specify what additional documentation needs to be included in each Affiliated Home Care Aide's personnel record, including all hard copy mail documents and communications received from the Department.

Factual Basis:

This section is adopted and is necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section to clarify that Home Care Organizations must maintain all documents received through the mail in the Home Care Aide's personnel record.**

Section 130066(e)

Specific Purpose:

This section is adopted to specify what additional documentation needs to be included in each staff and volunteer personnel record in either hard copy or electronic copy, including: documentation of a criminal record clearance, criminal

record exemption, or transfer; all hard copy mail documents and communications received from the Department by the licensee; verification of training hours; a signed statement acknowledging the requirement to report suspected child, dependent adult, and elder abuse; all communication pertaining to the Affiliated Home Care Aide's registration; tuberculosis examination documentation; and a signed Criminal Record Statement (LIC 508) form furnished by the Department.

Factual Basis:

This section is adopted and is necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section to allow Home Care Organizations to maintain personnel records in a hard copy or an electronic format.**

Section 130066(e)(2)

Specific Purpose:

This section is adopted to specify what additional documentation needs to be included in each staff and volunteer personnel record, including all hard copy mail documents and communications received from the Department.

Factual Basis:

This section is adopted and is necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section to clarify that Home Care Organizations must maintain all documents received through the mail in the staff and volunteer's personnel records.**

Section 130066(g)

Specific Purpose:

This section is adopted to specify what additional documentation needs to be included in each licensee's personnel record in either hard copy or electronic copy, including: documentation of a criminal record clearance, criminal record

exemption, or transfer; all hard copy mail documents and communications received from the Department by the licensee; verification of training hours; a signed statement acknowledging the requirement to report suspected child, dependent adult, and elder abuse; all communication pertaining to the Affiliated Home Care Aide's registration; tuberculosis examination documentation; and a signed Criminal Record Statement (LIC 508) form furnished by the Department.

Factual Basis:

This section is adopted and is necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section to allow Home Care Organizations to maintain personnel records in a hard copy or an electronic format.**

Section 130066(g)(2)

Specific Purpose:

This section is adopted to specify what additional documentation needs to be included in each licensee's personnel record, including all hard copy mail documents and communications received from the Department.

Factual Basis:

This section is adopted and is necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section to clarify that Home Care Organizations must maintain all documents received through the mail in the licensee's personnel records.**

Section 130084(a)

Specific Purpose:

This section is adopted to specify that a nonrefundable Home Care Aide Registry application fee of thirty-five dollars (\$35) will be charged by the Department for the enforcement and administration of the Act and these regulations.

**Factual Basis:**

This section is adopted and is necessary to specify the licensing fees as authorized by Sections 1796.12, 1796.31, 1796.47, 1796.49, and 1796.63 of the Health and Safety Code.

**Modification:**

**The Department is making a change to this section provide that the Home Care Aide Registry application fee will remain the amount of thirty-five dollars (\$35) until updated.**

**Section 130048(a)(1)**

**Specific Purpose:**

**This section is adopted to specify that the Department will update and publish the fee for the Home Care Aide Registry application, as often as necessary but no more than every twelve months, in the amount determined by the Department and consistent with Health and Safety Code sections 1796.47 through 1796.49. The updated fee will be published in a Department Provider Information Notice, as well as on the Department's website.**

**Factual Basis:**

**This section is adopted and is necessary to specify the licensing fees as authorized by Sections 1796.12, 1796.31, 1796.47, 1796.49, and 1796.63 of the Health and Safety Code.**

b) **Update Regarding Initial Statement of Reasons and Incorporation by Reference**

The August 13, 2018, 15-day renote with attachments, including Addendum to the Initial Statement of Reasons, are incorporated herein by reference in their entirety and available electronically at <http://www.cdss.ca.gov/inforesources/Emergency-Regulations/ORD-No-1017-21>. The addendum includes summaries of testimony made during the 45-day public comment period regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate testimony.

c) **15-Day Renote Dated August 13, 2018 Testimony and Response**

Pursuant to Government Code section 11347.1, a 15-day renote and complete text of modifications made to the regulations, including an Addendum to the Initial

Statement of Reasons, were made available to the public following the April 23, 2018 Public Hearing (August 13, 2018 through August 28, 2018).

The following testifiers submitted written testimony during the 15-day comment period:

- A. California Association for Health Services at Home (CAHSAH), Braden Oparowski, Director of Policy, Advocacy & Public Affairs
- B. At-Home Senior Services, Jim Small, Executive Director
- C. Home Care Association of America, Phil Bongiorno, Executive Director

The following written testimony was received during the 15-day comment period:

- A. Comments from California Association for Health Services at Home (CAHSAH)

- 1. Section 130030(b):

Comment:

Section 130030 prohibits an HCO from staffing a sub-office for more than 24 hours in a seven-day period. With the growing demand for home care aides and the considerable lack of trained home care aides, it is vital that an HCO can hold open recruitment for aides 7 days a week on a full-time basis in any of their approved sub-offices. Many applicants are already employed with other HCOs and it is difficult for them to take time away from their care schedules to apply for hours with other home care aide organizations, especially when the sub-offices are restricted to being open only 24 hours a week. Additionally, the time it takes an HCO to screen home care aide applicants and process paperwork can be lengthy. If an HCO only has one staff person to complete these home care aide recruitment tasks, it is extremely burdensome to limit that staff to only 24 hours in a week.

Recommendation: Grant extended use of sub-offices for the sole purposes of home care aide recruitment, training and retention. The extension should at least allow for a sub-office to be staffed for 30 hours in a 7-day period. Given that the Home Care Services Bureau would like to keep the sub-office restricted to part time hours, it makes sense to utilize the federal standard for the definition of part-time hours. The Affordable Care Act defined part-time hours as 30 hours per week.

Response:

The Department appreciates this comment, but is not amending the regulation at this time. Please refer to the Addendum to the Initial Statement of Reasons, dated August 13, 2018, for the Department's prior response to this comment. In addition, this comment is not within the scope of changes made to the

regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

2. Section 130001(a):

Comment:

Section 130001 states that “unless otherwise specified by the Department, the Home Care Organization shall maintain all personnel and administrative records in a hard copy format, as set forth in regulations.”

Recommendation: In this age of increased computer technology, it is important to recognize the many benefits of electronic record keeping as a more effective means for handling volumes of sensitive data. It therefore makes logical sense to allow the Bureau’s surveyors the ability to pull up an HCO’s electronic records verses manually going through drawers or binders of hard copies. Any documentation that would need to be printed could then be made available through hard copy. The time, cost and efficiency of electronic record keeping needs to be recognized sooner rather than years from now.

Response:

The Department appreciates this comment and agrees that electronic records should be allowed. The Department has made changes to Section 130001 to that effect.

B. Comments from At-Home Senior Services

1. Section 130006(b)(1) through (2):

Comment:

Thank you for removing the word “arranging” leaving the sentence to read “(1) Immediately cease unlicensed home care services; or (2) apply for and obtain a license as set forth in 1300021”.

You then comment the “HCO cannot operate unless the HCO obtains a license,” but this is not clearly stated in the regulation.

It would be clearer if the regulation stated an individual cannot operate until they receive a license. Thus, replace the words “or,” and “apply for and” with word “until,” and add the word “is” to clarify the sequence so the sentence reads, “(1) Immediately cease unlicensed home care services until (2) a license is obtained as set as forth Section 130021.” This removes any ambiguity about being able to operate while applying for a license.



Your fines and misdemeanor charges will likely be enforced by local district attorneys' and in the civil courts by licensed operators suing as allowed by the Bus & Prof Code Sec. 16750. These parties may not know of your descriptions in the Regulation's supporting documents. Thus, it seems prudent to clearly state in the Regulation the licensing requirement. This will eliminate having to rebut a defense that tries to cloud the issue by saying a license was applied and now waiting on the State.

Response:

The Department appreciates this comment, but is not amending the regulation at this time. This regulation states that an individual or entity who is operating unlicensed must, upon being issued a Notice of Operation in Violation of Law, immediately cease unlicensed home care services, or apply for and obtain a license. Following the public hearing on April 23, 2018, this regulation was amended by adding the phrase "and obtain" in order to clarify that not only does an individual or entity need to apply for a license, but also must obtain the license. The Department does not believe the regulation is ambiguous as written, and therefore will not be modifying this regulation again at this time.

C. Comments from Home Care Association of America (HCAOA)

1. Section 130001(a):

Comment:

(a) Unless otherwise specified by the Department, the Home Care Organization shall maintain all personnel and administrative records in a hard copy format, as set forth in regulations. HCAOA understands the need to maintain personnel and administrative records. We question the need to maintain these records in a hard copy format. Furthermore, the requirement is not clear how long a HCO is required to maintain the records. The HCSB proposal to impose a requirement for records to be maintained in a hard copy format seems to run counter to existing California state policy to conduct business in an environmentally friendly manner and move toward maintaining records in alternative electronic recordkeeping formats. Further, the proposal lacks a defined timeframe for which to maintain the records. HCAOA recommends the HCSB adopt a record retention policy for these records and all maintenance of record requirements under these regulations.

Response:

The Department appreciates this comment and agrees that electronic records should be allowed. The Department has made changes to Section 130001 to that effect.

2. Section 130021(c)(2)(B):

Comment:

We ask the HCSB to explain the need to inquire about the gender of a HCO applicant for license and question the need to have that requirement in the regulations.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Please refer to the Addendum to the Initial Statement of Reasons, dated August 13, 2018, for the Department's prior response to comments regarding this regulation section. In addition, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

3. Section 130028:

Comment:

We appreciate that the HCSB works diligently to operate the program in a cost-effective manner and to ensure there is adequate funding through fees and other sources to maintain the program. HCAOA has worked with DSS and HCSB to mitigate the costs of the licensing fees on our member companies of which many are classified as small businesses. We would ask the HCSB to continue to consider the impact before imposing any proposed new fees on HCOs.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Please refer to the Addendum to the Initial Statement of Reasons, dated August 13, 2018, for the Department's prior response to comments regarding this regulation section. In addition, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

4. Section 130030:

Comment:

We appreciate that the HCSB has allowed for a licensed HCO to operate a suboffice for the purpose of HCA training and recruitment or exchange of HCA personnel documents. We request that HCSB reconsider the definition of a suboffice, to be less restrictive and not limiting to the scope of the operations of the suboffice. In addition, we question the requirement limiting the staffing to the suboffice, so that a full time employee can be allowed to aid in recruitment, training and exchange of HCA personnel documents.

Response:

The Department appreciates this comment but is not amending the definition of suboffice (found in Section 130003(s)(5)) or this regulation section at this time. A HCO may apply for a waiver of this regulation if there is a HCO-wide need or circumstance and the HCO has an alternative means which meets the intent of this regulation. Waiver requests will be considered on a case-by-case basis. In addition, following the public hearing on April 23, 2018, this regulation was amended by removing the term “full-time staff” in order to clarify that this regulation applies to the number of hours in a week that a HCO may operate a suboffice, and not to the time-base of staff employed by the HCO.

5. Section 130066(c)(4):

Comment:

(c) (4) Each Affiliated Home Care Aide’s personnel record shall also include the following: A signed Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders (SOC 341 A) and a signed statement acknowledging the requirement to report suspected or known child abuse pursuant to Subdivision (e) of Section 1796.42 of the Health and Safety Code. As commented below, we support the use of SOC 341 A form to report alleged and suspected abuse/neglect of elder and dependent adults receiving care in the home. We seek clarification on whether the signed statement acknowledging the requirement to report child abuse (as opposed to only elder abuse) will be added to the SOC 341 A form or will HCOs need to develop a separate form for compliance with this requirement.

Response:

The Department appreciates this comment but is not amending this regulation at this time. Following the public hearing on April 23, 2018, this regulation was amended after it was determined the regulation did not include the requirement to report child abuse, as required by statute. However, the

Department is not currently requiring a specific form for HCOs to use in obtaining a signed statement from personnel acknowledging this requirement. A HCO may develop its own form for this purpose as long as it is in compliance with the statutory requirement.

6. Section 130071(a)(7):

Comment:

(7) A registration status displaying “registered-pending renewal” on the Home Care Aide Registry is displayed when the registered Home Care Aide’s has subsequent violent criminal history, subsequent felony conviction, administrative action under review by the Department, or the Department has issued an immediate exclusion order prohibiting the Affiliated Home Care Aide from employment pending administrative action proceedings. We request that HCSB replace the term “Registered-Pending Renewal” with “Suspended” to make it clear on the status of the HCA to ensure that the individual shall not continue to provide home care services until final determination.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Please refer to the Addendum to the Initial Statement of Reasons, dated August 13, 2018, for the Department’s prior response to comments regarding this regulation section. In addition, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

7. Section 130092:

Comment:

We support these exclusions outlined in this section.

Response:

The Department appreciates this comment.

8. Section 130100(c)(2), and (c)(2)(B) through (c)(2)(C):

Comment:

(2) A third-party repair person, or similar retained contractor, if all of the following apply: (B) The individual is not left alone with clients or prospective clients, and does not have access to confidential client information. (C) When a client, prospective client, or confidential client information is accessible to the

repair person or contractor, a staff person who has a criminal record clearance or criminal record exemption is also present. This paragraph states that if a HCO were to hire a third party repair person or similar contractor that they are not to be left alone with a client and one of our staff must be present. This seems a highly unreasonable burden on the HCO.

Response:

The Department appreciates this comment but is not amending these regulations at this time. Following the public hearing on April 23, 2018, the regulations were amended to clarify these regulations apply to individuals who are hired at the HCO, and not in the client's home. It is unclear from the comment if the issue being addressed pertains to repair persons or contractors hired at the HCO or in the client's home. If it pertains to individuals hired in a client's home, then the Department does not have jurisdiction over these situations. However, if it pertains to individuals who are hired at the HCO, then the Department has determined these regulations, as written, are necessary to ensure the health and safety of clients. Allowing individuals without a criminal background clearance to be left alone with clients, prospective clients, or to have access to confidential client information at a HCO would put vulnerable clients at risk.

9. Section 130110(b):

Comment:

(b) After a review of the criminal record information, the Department may grant a criminal record exemption if the affected individual presents substantial and convincing evidence satisfactory to the Department that the individual has been rehabilitated and presently is of such good character pursuant to Section 1522 of the Health and Safety Code as to justify registration on the Home Care Aide Registry, being issued or maintaining a Home Care Organization license, or employment or volunteer work with a licensed Home Care Organization.... We appreciate that the HCSB may have the authority to grant a criminal record exemption and ask HCSB to provide more specific information on the how that determination is made, what criteria is used and what procedures are in place to grant the exemption.

Response:

The Department appreciates this comment but is not amending the regulations at this time. This comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

10. Section 130110(h)(1):

Comment:

(h) (1) Other than maintaining the Home Care Registry, the Department shall have no oversight responsibility regarding Home Care Aides. Any condition placed on a Home Care Aide shall relate solely to any criminal conviction information received by the Department. The purpose of the Home Care Services Consumer Protection Act is to promote consumer protection for seniors and individuals with disabilities who hire private aides to come into their homes and provide assistance with activities of daily living. We believe that HCSB should have processes for reporting bad-behavior, and policies and procedures in place to for recording such incidents, including penalties for such bad behavior.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Please refer to the Addendum to the Initial Statement of Reasons, dated August 13, 2018, for the Department's prior response to comments regarding this regulation section. In addition, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

11. Section 130110(n):

Comment:

(n) At the Department's discretion, an individual who is otherwise eligible for a simplified criminal record exemption may be required to go through the standard criminal record exemption process if the Department determines such action will help to protect the health and safety of clients. This section distinguishes between a "simplified" and "standard" criminal record exemption process and implies that there are two separate processes. We would ask HCSB to clarify the differences between the two processes and provide information on the specific procedures in place to determine how each process is determined.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Please refer to the Addendum to the Initial Statement of Reasons, dated August 13, 2018, for the Department's prior response to comments regarding this regulation section. In addition, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

12. Section 130110(t):

Comment:

(t) At the Department's discretion, a criminal record exemption may be rescinded if it is determined that: (1) The criminal record exemption was granted in error; (2) The criminal record exemption does not meet current criminal record exemption laws or regulations; or (3) The conviction for which a criminal record exemption was granted subsequently becomes non-exemptible by law. This section provides that a criminal record exemption may be rescinded based on certain determinations set forth in the regulations. We would ask HCSB to clarify how the determinations are made and to provide information on the specific procedures in place to make those determinations.

Response:

The Department appreciates this comment but is not amending the regulations at this time. This comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

13. General Comments:

As the HCSB moves forward to implement these regulations, HCAOA would like to provide the following general comments that focus on program efficiency and effectiveness.

Comment:

We urge HCSB adhere to strict timeframes for enforcement of civil penalties for unlicensed entities.

Response:

The Department appreciates this comment; however, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

Comment:

We recommend HCSB develop an operation manual reflecting HCSB policies and procedures. An operations manual helps to maintain consistency among agency staff with regard to agency regulatory procedures. The information should be made available on the HCSB website, similar to other agencies.

Response:

The Department appreciates this comment; however, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

Comment:

We recommend the HCSB take the necessary steps to reduce HCSB costs related to licensing and registration expenses. Cost pressures are becoming extreme as HCOs and those we serve are affected by these costs.

- Eliminate much of the travel costs associated with Sacramento-based analysts visiting licensees throughout California and utilize evaluators in local offices throughout the State.
- Consider utilizing an electronic submission process of required documents.
- Make greater use of electronic and automated communications. Reduce or eliminate postal mail.

Response:

The Department appreciates this comment; however, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

Comment:

Measure HCSB productivity utilizing the following suggested performance measurements:

- Registration applications completed vs. registration applications received.
- Licensee applications completed vs. registration applications received.
- Registration application denials appealed to Administrative Law Judges vs. appeals reversed by Admin Law Judges, for the past 12 months.
- Registrations revoked by the DSS vs. total registrations completed for the 12 months.
- Licenses revoked by DSS vs. total active licensees for the past twelve months.

Response:

The Department appreciates this comment; however, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.



14. Additional Comments:

Comment:

The HCSB should consider a deemed status policy to recognize voluntary accreditation as an alternate pathway to licensure. The CA Department of Health has adopted a policy in the home health care agency licensing process to recognize accrediting organizations as a pathway to licensure to alleviate the administrative burden for providers that chose accreditation. This would also serve as a potential cost savings if the Department can develop a process to deem a credible third party accrediting organization to demonstrate compliance with the home care licensing requirements.

Response:

The Department appreciates this comment; however, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

Comment:

We would like HCSB to take a broader approach to ensuring specific labor requirements including appropriate worker classification of Home Care Aides. We urge HCSB to work with the Department of Labor & Workforce Development to jointly address this concern that remains unchecked in particular as it relates to ensuring aides are properly classified as W-2 employees. We urge HCSB to work with policymakers to make the appropriate changes to the California civil code and subsequently issue regulations to ensure compliance with federal and state labor worker classification regulations.

Response:

The Department appreciates this comment; however, this comment is not within the scope of changes made to the regulations following the 45-day comment period from March 9, 2018, through April 23, 2018.

Comment:

We support the use of SOC 341 A form to report alleged and suspected abuse/neglect of elder and dependent adults receiving care in the home.

Response:

The Department appreciates this comment.